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SENSITIVE

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DEPT PASS USTR FOR CATHERINE HINCKLEY

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SUBJECT: TELECOMMUNICATION TRADE AGREEMENTS 2009: BRAZIL'S 3.4-3.6
GHz SPECTRUM AUCTION

SENSITIVE BUT UNCLASSIFIED

REF: STATE 4730

¶1. (SBU) Summary: Brazil's telecommunications regulatory agency, ANATEL, will be auctioning spectrum in the 3.5 GHz frequency band once a determination is made whether to allow for full mobility within the designated spectrum and whether to place additional obligations on 3.5 GHz licensees. Jeferson Fued Nacif, ANATEL's Manager of the Office of International Affairs, explained that ANATEL is currently evaluating statements received during the public comment period and that the ANATEL board would make a decision on full mobility in February, prior to March's planned auction. Nacif confirmed ANATEL's advocacy for a technologically neutral approach to spectrum use and that ANATEL supports both Time Division Duplexing (TDD) and Frequency Division Duplexing (FDD) methods in the 3.5 GHz band. ANATEL has received public comments on the subject and will make a final decision soon. ANATEL's General Manager of Certification and Spectrum Engineering, Maximiliano Martinhao, verified that ANATEL's decisions to place domestic sourcing requirements on client devices or network equipment used by 3.5 GHz licensees as well as imposing obligations on 3.5 GHz licensees to contribute to research and development projects in the area of telecommunications conducted in Brazil, will be determined after public hearings on these issues are held in February. End Summary.

A QUESTION OF COMPETITION

¶2. (SBU) Nacif highlighting ANATEL's internal debate over whether to permit full mobility within the 3.5 GHz frequency by pointing to concerns related to the mobile sector's participation in the auction and a resulting decrease in competition within the spectrum. Nacif argued that the mobile sector's deep pockets would allow them to purchase a majority of the spectrum by paying top dollar in an auction format, limiting the number of participating companies in the spectrum, potentially leading to an unintended monopoly. Nacif added that the mobile companies would then be forced to charge elevated user fees for the spectrum in order to recover their initial investment. Another argument for restricting mobile participation and controlling the pricing in the 3.5GHz band is that it would minimize the devaluation effect on the 2.1GHz spectrum purchases made during an auction that was held in December 2007. The internal debate between maximizing revenues and increasing competition is currently being waged between ANATEL and Brazil's Ministry of Communications (MOC), with MOC favoring the former approach. ANATEL is studying Japan's spectrum pricing policy that favors a cap pricing, pro competition approach and the EU's pro revenue approach to see which model best serve's Brazil's interests. Nacif noted that should a pro revenue approach be adopted, ANATEL would then consider an auction model that fosters increased participation by capping licensee's maximum spectrum allotment. One

idea offered by Nacif would be to sell the auction's 200MHz in lots of 5MHz and cap total individual purchases at 20-30MHz.

TECHNICAL ASPECTS

13. (SBU) In response to the concerns of ANATEL adopting technologically restrictive policies for the 3.5 spectrum, Nacif confirmed that ANATEL has always adopted technologically neutral positions in the past and that both TDD and FDD methods would be promoted by ANATEL. However, Nacif and Martinhao emphasized that ANATEL is currently analyzing public comments on the subject and that a final decision will be made after ANATEL has properly assessed the commercial impact of opening the spectrum to both systems. Martinhao explained that increased foreign competition and its products caused by opening the sector to complete broadband mobility has compelled ANATEL to consider local content requirements as well as obligating 3.5 GHz licensees to invest in Brazilian telecommunications projects. Martinhao stressed ANATEL's position of promoting fair competition and stated that ANATEL and the MOC do not want to be perceived as adopting protectionist measures; nonetheless, ANATEL will decide on this matter by means of internal debates and public comments that will be received in February.

14. (SBU) Comment: Brazil's auction of the 3.5 GHz spectrum has been delayed for over 3 years, a delay that has seen ANATEL and the MOC address issues ranging from spectrum pricing policies to full mobility participation. In the current internal debate, Brazil is considering potential local content requirements and licensee obligations to invest in local telecommunication projects as it determines its approach to the 3.5 GHz license auction. These additional delays to the already three year debate continue to deprive subscribers and service providers of much needed

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differentiated services. End Comment.

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